

# HOUSE BILL No. 1427

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-16.

**Synopsis:** Liability for health care treatment decisions. Provides for a duty of ordinary care for health insurance carriers, health maintenance organizations, and other managed care entities when making health care treatment decisions. Makes health insurance carriers, health maintenance organizations, and other managed care entities liable for harm resulting from health care treatment decisions made without exercising ordinary care. Prohibits certain actions by a health insurance carrier, a health maintenance organization, or other managed care entity.

**Effective:** July 1, 2003.

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January 14, 2003, read first time and referred to Committee on Insurance, Corporations and Small Business.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

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## HOUSE BILL No. 1427



A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 27-16 IS ADDED TO THE INDIANA CODE AS
- 2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
- 3 2003]:
- 4 **ARTICLE 16. LIABILITY FOR CERTAIN HEALTH CARE**
- 5 **TREATMENT DECISIONS**
- 6 **Chapter 1. General Provisions and Definitions**
- 7 **Sec. 1. This chapter does not apply to worker's compensation**
- 8 **insurance coverage under IC 22-3-2 through IC 22-3-7.**
- 9 **Sec. 2. The definitions in this chapter apply throughout this**
- 10 **article.**
- 11 **Sec. 3. "Enrollee" means the following:**
- 12 **(1) With respect to a health maintenance organization, a:**
- 13 **(A) subscriber; or**
- 14 **(B) dependent of a subscriber;**
- 15 **who is covered by the health maintenance organization.**
- 16 **(2) With respect to a managed care entity other than a health**
- 17 **maintenance organization:**



- 1 (A) an individual who is enrolled in a health care plan; or  
 2 (B) a dependent of an individual described in clause (A)  
 3 who is covered by the health care plan.
- 4 Sec. 4. "Health care plan" means a plan under which a person  
 5 assumes responsibility to:  
 6 (1) arrange for;  
 7 (2) pay for; or  
 8 (3) reimburse any part of the cost of;  
 9 health care services through a health insurance carrier, a health  
 10 maintenance organization, or another managed care entity.
- 11 Sec. 5. "Health care provider" has the meaning set forth in  
 12 IC 34-18-2-14.
- 13 Sec. 6. "Health care treatment decision" means a determination  
 14 that:  
 15 (1) is made when medical services are provided by a health  
 16 care plan; and  
 17 (2) affects the quality of the diagnosis, care, or treatment  
 18 provided to an insured or enrollee of the health care plan.
- 19 Sec. 7. "Health insurance" means one (1) or more of the kinds  
 20 of insurance described in Class 1(b) and Class 2(a) of IC 27-1-5-1.
- 21 Sec. 8. "Health insurance carrier" means an insurer (as defined  
 22 in IC 27-1-2-3) that provides health insurance.
- 23 Sec. 9. "Health maintenance organization" has the meaning set  
 24 forth in IC 27-13-1-19.
- 25 Sec. 10. (a) "Managed care entity" means an entity that, on  
 26 behalf of or as part of a health care plan:  
 27 (1) delivers health care services to a defined enrollee  
 28 population;  
 29 (2) administers the delivery of health care services to a  
 30 defined enrollee population; or  
 31 (3) assumes the risk for the delivery of health care services to  
 32 a defined enrollee population.
- 33 (b) The term does not include:  
 34 (1) an employer purchasing coverage or acting on behalf of:  
 35 (A) the employer's employees; or  
 36 (B) the employees of one (1) or more subsidiaries or  
 37 corporations affiliated with the employer; or  
 38 (2) a pharmacy that holds a pharmacy permit issued by the  
 39 Indiana board of pharmacy under IC 25-26-13.
- 40 Sec. 11. "Ordinary care" means the following:  
 41 (1) With respect to:  
 42 (A) a health insurance carrier;

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1                   **(B) a health maintenance organization; or**  
 2                   **(C) another managed care entity;**  
 3                   **the degree of care that a health insurance carrier, health**  
 4                   **maintenance organization, or managed care entity of ordinary**  
 5                   **prudence would use under the same or similar circumstances.**  
 6                   **(2) With respect to a person who is an employee, an agent, an**  
 7                   **ostensible agent, or a representative of:**  
 8                   **(A) a health insurance carrier;**  
 9                   **(B) a health maintenance organization; or**  
 10                   **(C) another managed care entity;**  
 11                   **the degree of care that a person of ordinary prudence in the**  
 12                   **same profession, specialty, or area of practice as the person**  
 13                   **would use under the same or similar circumstances.**  
 14                   **Sec. 12. "Person" means an individual, a corporation, a**  
 15                   **partnership, a limited liability company, an unincorporated**  
 16                   **association, the state, or a political subdivision (as defined in**  
 17                   **IC 36-1-2-13).**  
 18                   **Chapter 2. The Duty of Ordinary Care**  
 19                   **Sec. 1. This chapter does not apply to worker's compensation**  
 20                   **insurance coverage under IC 22-3-2 through IC 22-3-7.**  
 21                   **Sec. 2. A health insurance carrier, a health maintenance**  
 22                   **organization, or another managed care entity through which a**  
 23                   **health care plan is operated:**  
 24                   **(1) has the duty to exercise ordinary care when making health**  
 25                   **care treatment decisions; and**  
 26                   **(2) is liable for damages in compensation for harm to an**  
 27                   **insured or enrollee that is proximately caused by the failure**  
 28                   **of the health insurance carrier, health maintenance**  
 29                   **organization, or managed care entity to exercise ordinary**  
 30                   **care.**  
 31                   **Sec. 3. A health insurance carrier, a health maintenance**  
 32                   **organization, or another managed care entity through which a**  
 33                   **health care plan is operated is liable for damages in compensation**  
 34                   **for harm to an insured or enrollee proximately caused by a health**  
 35                   **care treatment decision made by an employee, an agent, an**  
 36                   **ostensible agent, or a representative of the health insurance**  
 37                   **carrier, health maintenance organization, or managed care entity**  
 38                   **if, at the time the decision is made:**  
 39                   **(1) the employee, agent, ostensible agent, or representative is**  
 40                   **acting on behalf of the health insurance carrier, health**  
 41                   **maintenance organization, or other managed care entity; and**  
 42                   **(2) the health insurance carrier, health maintenance**

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1 organization, or other managed care entity:

2 (A) has the right to exercise influence or control over the  
3 employee, agent, ostensible agent, or representative; or

4 (B) is actually exercising influence or control over the  
5 employee, agent, ostensible agent, or representative,  
6 resulting in the failure to exercise ordinary care.

7 **Sec. 4. In an action brought under section 3 of this chapter that**  
8 **is based on a health care treatment decision allegedly made by an**  
9 **employee, an agent, an ostensible agent, or a representative of a**  
10 **health insurance carrier, a health maintenance organization, or**  
11 **another managed care entity through which a health care plan is**  
12 **operated, it is a defense that:**

13 (1) neither:

14 (A) the health insurance carrier, health maintenance  
15 organization, or other managed care entity; nor

16 (B) the employee, agent, ostensible agent, or representative  
17 for whose conduct the health insurance carrier, health  
18 maintenance organization, or other managed care entity is  
19 allegedly liable;

20 controlled, influenced, or participated in the health care  
21 treatment decision in question; and

22 (2) the health insurance carrier, health maintenance  
23 organization, or other managed care entity did not deny or  
24 delay payment for any treatment prescribed or recommended  
25 by a health care provider to the insured or enrollee in  
26 question.

27 **Sec. 5. Sections 2 and 3 of this chapter do not obligate a health**  
28 **insurance carrier, a health maintenance organization, or other**  
29 **managed care entity through which a health care plan is operated**  
30 **to provide to an insured or enrollee treatment that is not covered**  
31 **by the health care plan.**

32 **Sec. 6. A health insurance carrier, a health maintenance**  
33 **organization, or another managed care entity may not:**

34 (1) remove a physician or other health care provider from its  
35 health care plan; or

36 (2) refuse to renew the status of a physician or other health  
37 care provider with the health care plan;

38 **for advocating on behalf of an insured or enrollee for appropriate**  
39 **and medically necessary health care for the insured or enrollee.**

40 **Sec. 7. (a) A health insurance carrier, a health maintenance**  
41 **organization, or another managed care entity may not enter into**  
42 **a contract with a:**

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1           **(1) physician, hospital, or other health care provider; or**  
 2           **(2) pharmaceutical company;**  
 3           **that includes an indemnification or hold harmless clause applying**  
 4           **to the acts or conduct of the health insurance carrier, health**  
 5           **maintenance organization, or other managed care entity.**

6           **(b) An indemnification or hold harmless clause described in**  
 7           **subsection (a) is void.**

8           **Sec. 8. A law prohibiting a health insurance carrier, a health**  
 9           **maintenance organization, or another managed care entity from**  
 10           **practicing medicine or being licensed to practice medicine may not**  
 11           **be asserted as a defense by a health insurance carrier, a health**  
 12           **maintenance organization, or another managed care entity in an**  
 13           **action brought under this chapter.**

14           **Sec. 9. In an action against a health insurance carrier, health**  
 15           **maintenance organization, or other managed care entity under this**  
 16           **chapter, a finding that a physician or another health care provider**  
 17           **is an employee, an agent, an ostensible agent, or a representative**  
 18           **of the health insurance carrier, health maintenance organization,**  
 19           **or other managed care entity may not be based solely on proof that**  
 20           **the name of the physician or other health care provider appears in**  
 21           **a listing of approved physicians or health care providers made**  
 22           **available to insureds or enrollees under a health care plan.**

23           **Sec. 10. A person who brings an action under this chapter must:**

- 24           **(1) first exhaust all administrative remedies available to the**  
 25           **person; and**  
 26           **(2) comply with IC 34-18.**

27           **Sec. 11. This chapter does not create any liability on the part of:**

- 28           **(1) an employer that purchases coverage or assumes risk on**  
 29           **behalf of its employees;**  
 30           **(2) an employer purchasing group that purchases coverage or**  
 31           **assumes risk on behalf of its members' employees; or**  
 32           **(3) a pharmacy that holds a pharmacy permit issued by the**  
 33           **Indiana board of pharmacy under IC 25-26-13.**

34           **SECTION 2. [EFFECTIVE JULY 1, 2003] IC 27-16, as added by**  
 35           **this act, applies to causes of action arising after June 30, 2003.**

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